

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMIRE CHIVERS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EVETTE NASH-CHIVERS,

Respondent-Appellant,

and

HORACE CHIVERS,

Respondent.

UNPUBLISHED
September 1, 2009

No. 288969
Wayne Circuit Court
Family Division
LC No. 01-400993

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent Evette Nash-Chivers appeals as of right from the trial court's November 2008 order terminating her parental rights to the minor child Amire Chivers pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody), (3)(i) (parental rights to another child were previously terminated due to serious neglect or abuse and previous attempts to rehabilitate the parent failed), and (3)(j) (reasonable likelihood of harm if child is returned to parent). We affirm.

I. Basic Facts And Procedural History

In order to understand the trial court's decision, a brief review of Nash-Chivers' prior history with The Department of Human Services, which led to the termination of her parental rights to her other children, is necessary. In June 2001, two of Nash-Chivers' other children, Ivan Nash and Craig Nash, were removed from her care. Nash-Chivers was homeless, unemployed, addicted to crack cocaine, and had left the children with her mother until she could properly care for them. The children became wards of the court in August 2001, at which time Nash-Chivers was pregnant with another child, Daniel Nash. Nash-Chivers admitted to allegations that she was still using crack cocaine and had not received any prenatal care. A treatment plan was established.

Daniel Nash tested positive for cocaine at his birth, and a petition for temporary custody was filed. Nash-Chivers still did not have her own home, had not received any prenatal care, and was using crack cocaine about every four days. Nash-Chivers voluntarily relinquished custody. Daniel Nash subsequently became a ward of the court and reunification efforts were continued. In October 2002, Nash-Chivers' parental rights to Ivan, Craig, and Daniel Nash were terminated because she failed to substantially comply with and benefit from the parent/agency agreement, which included attendance at substance abuse treatment, counseling, and parenting classes, as well as requirements to obtain suitable housing, obtain employment, and attend parenting time.

In November 2005, Nash-Chivers gave birth to another child, Ladarius Chivers, who tested positive for cocaine and received no prenatal care. Horace Chivers was his father. A petition for permanent custody was filed shortly after Ladarius Chivers' birth because Nash-Chivers had failed to rectify the condition that led to the removal of her other children and demonstrated that she could not properly care for the child. Nash-Chivers admitted that she still had a substance abuse problem, no housing, and no employment. The trial court made Ladarius Chivers a ward of the court, but did not authorize proceeding immediately to a termination hearing. The trial court wanted to give Nash-Chivers an opportunity to become sober, obtain housing, and present proof of income. A treatment plan was established that included substance abuse treatment, counseling, and parenting classes. Ultimately, however, Nash-Chivers failed to substantially comply with the treatment plan and her parental rights to Ladarius Chivers were terminated.

The child in this case, Amire Chivers, was born in April 2008, to Nash-Chivers and Horace Chivers. Shortly after Amire Chivers' birth, the Department sought to terminate Nash-Chivers' parental rights because she had failed to comply with previous treatment plans, failed to rectify the situation that led to the termination of her parental rights to other children, and failed to demonstrate that she had the ability to properly care for a child. The petition alleged that Nash-Chivers had a history of mental illness and substance abuse, that she received prenatal care only twice during her pregnancy with Amire Chivers, that she and Amire Chivers both tested positive for cocaine at his birth, and that she denied using cocaine and believed that the drug screen was positive because she took Tylenol 3 for a toothache.

At the preliminary hearing, Kathryn Willis, the protective services worker, testified that she believed it was contrary to Amire Chivers' best interests to be in Nash-Chivers' custody and that adoption was in Amire Chivers' best interests. Willis stated that Nash-Chivers had been offered treatment plans in the past and the problems that existed then still existed. The trial court approved the petition and the permanency plan, but subsequently allowed Nash-Chivers supervised visitation. However, because Nash-Chivers' parental rights to other children had been previously terminated, the trial court found that reasonable reunification efforts were not required in this case and, in fact, reunification would be harmful to Amire Chivers.

At the adjudication hearing in August 2008, the trial court took judicial notice of the legal file regarding the Department's involvement with Nash-Chivers since 2001. It also found that it had jurisdiction over Amire Chivers based on Nash-Chivers' history of substance abuse, failure to comply with treatment plans, and failure to rectify the conditions that caused the other children to be removed from her custody. Additionally, Nash-Chivers failed to protect Amire Chivers from drug exposure. Nash-Chivers requested that the trial court order the Department to refer her to services, such as parenting classes, to assist her in her effort to prove that

reunification would be possible. The trial court stated that the Department was not required to expend reasonable efforts, but the Department was to give Nash-Chivers a list of places that conducted parenting classes.

The termination hearing was originally set for October 2, 2008. Nash-Chivers failed to appear. Her counsel informed the trial court that her absence was because she was the sole caretaker for her elderly grandmother and had taken her grandmother to the hospital. The trial court granted Nash-Chivers counsel's request for a continuance, but required Nash-Chivers to present documentation substantiating the reason for her absence. In addition, she was to submit to a drug screen and present the results to the trial court by October 23, 2008, the next trial date. Nash-Chivers failed to appear at trial, and she had not submitted documentation regarding her absence at the last hearing or drug screen results.

The trial court determined that there was clear and convincing evidence that the petition allegations were substantiated, Amire Chivers was at risk of being neglected if left in Nash-Chivers' care, Nash-Chivers' parental rights to other children had been terminated previously, Nash-Chivers failed to comply with previous treatment plans, and there was evidence of continued drug abuse. Thus, the trial court found that termination of Nash-Chivers' parental rights to Amire Chivers was justified pursuant to MCL 712A.19b(3)(g), (i), and (j), it was in Amire Chivers' best interests for Nash-Chivers' parental rights to be terminated, and no additional reunification efforts should be made.¹

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁴ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

¹ The trial court also terminated Horace Chivers' parental rights, but he is not a party to this appeal.

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

On appeal, Nash-Chivers' argument focuses on the fact that the Department did not provide her with resources to improve her parenting ability.⁶ Nash-Chivers' contends that if it had, she possibly could have overcome her substance abuse problem and rectified the conditions that led to Amire Chivers' removal from her custody. She argues that the trial court might have reached a different result had she been allowed to benefit from the Department's resources. However, her arguments are without merit.

There was no dispute that Nash-Chivers' parental rights to four other children had been terminated previously, and the evidence clearly established that prior attempts to rehabilitate Nash-Chivers were unsuccessful. Thus, § 19b(3)(i) was established. In addition, the Department presented clear and convincing evidence that Nash-Chivers failed to provide Amire Chivers with proper care when he tested positive for cocaine at birth and, considering Nash-Chivers' longstanding substance abuse problem, there was no reasonable expectation that she could provide proper care and custody within a reasonable time, and, in fact, there was a reasonable likelihood that the child would be harmed if returned to Nash-Chivers' custody. Therefore, §§ 19b(3)(g) and (j) were also met.

We note that, contrary to Nash-Chivers' contention, she was not denied an opportunity to present evidence of psychological evaluations or substance abuse counseling. And although Nash-Chivers complains that she was not offered services to address her substance abuse problem, because Nash-Chivers' parental rights to four other children were previously involuntarily terminated and the Department sought termination of her parental rights to the instant child at the initial dispositional hearing, the Department was not obligated to offer Nash-Chivers services to address her substance abuse problem.⁷

We conclude that the trial court did not clearly err in finding that statutory grounds for termination of Nash-Chivers' parental rights were established by clear and convincing evidence.⁸

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of

⁶ Because respondent's parental rights to four other children had been involuntarily terminated and petitioner sought termination of her parental rights to the instant child in its original petition, petitioner was not obligated to offer respondent services to address her substance abuse problem. MCR 3.977(E); MCL 712A.19a(2)(c).

⁷ MCR 3.977(E); MCL 712A.19a(2)(c).

⁸ MCR 3.977(J); MCL 712A.19b(5); *Trejo, supra* at 356-357.

parental rights.⁹ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹⁰ We review the trial court's decision regarding the child's best interests for clear error.¹¹

B. Analysis

Nash-Chivers contends that the trial court erred in its best interests analysis because there was evidence that a bond may have developed between her and Amire Chivers during their supervised visits. We disagree. Contrary to Nash-Chivers' assertions, there was no evidence that she had developed a bond with the child, who was removed from her custody at birth. Further, the evidence showed that Nash-Chivers had no income or suitable housing and continued to abuse drugs. The trial court did not clearly err in finding that termination of Nash-Chivers' parental rights was in the child's best interests.¹²

In sum, we conclude that the trial court did not err in terminating Nash-Chivers' parental rights to the child. Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

⁹ MCL 712A.19b(5); *Trejo, supra* at 350. We note that MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights *is* in the child's best interests, 2008 PA 199, effective July 11, 2008, rather than finding that termination is *not* in the child's best interests.

¹⁰ *Trejo, supra* at 354.

¹¹ *Id.* at 356-357.

¹² MCL 712A.19b(5); *In re Trejo, supra* at 356-357.